92-871

No.

Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

IN THE

Supreme Court Of The United States

NOVEMBER TERM, 1992

IN RE: GRACE R. MASSETT
Deceased.

ROBERT N. WEICHERT,

Petitioner,

vs.

ELAINE W. ROBERTS,

Respondent.

ON APPEAL FROM DISTRICT COURT FOR THE
FOURTH DISTRICT - STATE OF FLORIDA

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. WHETHER THE CIRCUIT FOR PALM BEACH COUNTY, PROBATE DIVISION ERRED IN PROCEEDING WITH THIS MATTER WITHOUT JURISDICTION.

2. WHETHER THE LOWER COURT ERRED IN SIGNING AND EXECUTING TWO ORDERS DATED JULY 29, 1991 THAT CONTRADICT AND CONTRAVENE ONE ANOTHER.

3. WHETHER THE LOWER COURT ERRED IN RENDERING TWO ORDERS DATED JULY 29, 1991 WITHOUT AFFORDING APPELLANT PROPER TIME TO RESPOND.

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LIST OF ALL PARTIES TO

THE PROCEEDING.

1. Robert M. Weichert, Petitioner.

2. Elaine W. Roberts, Respondent.

3. Solicitor General of the United States, because the interpretation provision of the United States Constitution was drawn in question and made by a state court of last resort and 28 USC §2403(a) may be applicable.

4. The Attorney General of the State of Florida, because in this proceeding, the constitutionality of a statute of the State of Florida is drawn in question, the state of any agency, officer or employee thereof is not a party and the state court of last resort interpreted the state statute in its favor and 28 USC §2403(b) may be applicable.

OPINIONS BELOW

There was no formal opinion rendered in the District Court of the State of Florida, Fourth District. Its *per curiam-affirmed* decision and mandate are reproduced in appendix A and B respectively to this petition, and no official and unofficial reports of opinions were delivered in the case by other courts or administrative agencies.

JURISDICTION

1. Date of entry of judgment or entry to be reviewed is August 21, 1992.

2. By Florida Constitution, no petition for review is allowed. There is no order granting an extension of time within which to file a writ of certiorari.

3. The statutory provision believed to confer on this court jurisdiction to review the judgment or decree in question or writ of certiorari is 29 USC §1257 Act of June _____, 1988, 100th Cong., 2d Sess., _____ Stat. _____, c. _____; P.L. 100-352; Article III of the United States Constitution; and §25 First Judiciary Act, 1789, Act of September 24, 1789, c. 20, 1 Stat. 73, 85-87 providing that, where is drawn in question the validity of a statute of, or an authority exercised under any state, on the ground of their being repugnant to the constitution, treaties or law of the

United States, and the decision is in favor of such their validity, or where is drawn in question the construction of any clause of the constitution, or of a treaty, or statute of, or commission held under the United States, and the decision is against the title, right, privilege or exemption specially set up or claimed by either party. The fear of State Court parochialism in rejecting claims of constitutional right is well founded. Cohens v. Commonwealth of Virginia, (1821) 6 Wheat. (19 US) 304, 4 L.Ed. 97; Ableman v. Booth, (1858) 21 How (62 US) 506, 16 L.Ed. 169.

Limited to judgments of the highest court in the state (Florida) in which decision could be had, the Florida District Court for the Fourth District is the highest court, under the circumstances in this case, in which decision could be had because the State

of Florida allows no appeal or discretionary review by the Florida Supreme Court in cases, such as this, where the decision in the District Court of Appeal was "*per curiam-affirmed*". The 1980 amendment Article V, §3(b) of the Florida Constitution severely limits the Florida Supreme Court appellate-discretionary, and original jurisdiction and will only allow discretionary review of District Court decisions that declare invalid a state statute or provision of the state constitution. Also, Rule 9.030(a)(2) of the Florida Rule of Appellate Procedure was substantially revised and amended by Article V §3(b)(3), Florida Constitution 1980 to restrict the scope of review under the Florida Supreme Court's discretionary jurisdiction to six designated categories of District Court decisions. Rule 9.030 §(a)(2)(A) subsection (ii) requires a

District Court to "expressly declare" a state statute valid before the Florida Supreme Court's discretionary jurisdiction may be invoked. This case was decided "*per curiam-affirmed*" which did not expressly, that is without opinion, explain or define, by analysis or construction declare the state statute valid. Jenkins v. State, 385 So. 2d 1356 (1980); Golden Loaf Bakery, Inc. v. Charles W. Rex Const. Co., 334 So. 2d 585 (1976); Davis v. Mandau, 410 So. 2d 915 (1981); St. Paul Title Ins. Co. v. Davis, 392 So. 2d 1304 (1980). Subsection (iv) requires "express" as well as a "direct" conflict of District Court decisions as a pre-requisite to Florida Supreme Court review, abolishing the Foley doctrine (Foley v. Weaver Drugs, Inc., 177 So. 2d 221 (Fla. 1965)).

A rehearing en banc was allowed by the Florida District Court to review the

Federal constitutional question of due process, which rehearing was denied August 21, 1992.

CONSTITUTIONAL PROVISIONS

FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

"...nor be deprived of life, liberty or property, without due process of law,..."

FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

"...No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."

SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

"...to be confronted with the witnesses against him; to have compulsory

process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense..."

SECTION 733.303(1)(a) OF THE FLORIDA PROBATE CODE.

STATEMENT OF THE CASE

On July 17, 1991 James W. Nowlin, Jr., attorney for Elaine W. Roberts, Personal Representative of the estate of Grace R. Massett, prepared a notice of hearing, final accounting of personal representative, petition for personal representative's fee, petition for allocation of attorney's fees with exhibits A and B attached, and affidavit as to attorney's fees and personal representative's fee. He put all of the aforementioned into an envelope and, at sometime thereafter, mailed to appellant at 46 Oswego Street, Baldwinsville, New York by restricted certified mail, return receipt requested. 46 Oswego Street, Baldwinsville, New York is a multi-purpose commercial building with at least four offices and two residential apartments having no relation to

appellant. Appellant does not own the building, but does share a fifth office therein. Mr. Nowlin's notice of hearing provided July 29, 1991 at 2:30 P.M. as the date and time for the aforementioned matters to be heard in the Circuit Court, Palm Beach County, Probate Division. Sometime on July 22, 1991, unknown to appellant, a postman delivered mail throughout the various offices at 46 Oswego Street, Baldwinsville, New York, and delivered the aforementioned restricted mail that was mandated to be delivered to appellant, certified, return receipt requested to one D. Seymour who has no connection with appellant, is not authorized by the postal authorities or its rules to receive appellant's mail, is not in his employ, but who was found somehow in and about the premises. This is not a mere denial by the addressee. The green card, return receipt requested

by James W. Nowlin, Jr., clearly documents that appellant did no sign for, nor receive the notice of hearing. That card should have alerted attorney Nowlin of the fatal flaw of his delivery and the jurisdictional defect that it caused.

The next day, July 23, 1991, appellant was given Mr. Nowlin's envelope by the receptionist at 46 Oswego Street, Baldwinsville, New York and immediately responded thereto. Appellant prepared and mailed his objections to the final accounting of the personal representative, his answer and objections to the petition of Elaine W. Roberts, for personal representative's fees and court costs, and his answer for petition of attorney's fees, all contesting lack of jurisdiction of the court to hear and determine the matter, that petitioner had failed to provide sufficient time and notice of hearing to attend and be heard on issues

of this matter, and other affirmative and separate defenses. Appellate posted in overnight express mail his objections and answers aforementioned so that it would arrive and be filed by the Clerk of the Circuit Court at Probate Division before July 29, 1991. Appellant advised the court of the impossibility for him to attend on July 29, 1991 on such short notice and requested an adjournment.

Appellant submits that the questions of lack of service, lack of jurisdiction, lack of sufficient time to respond to his other affirmative and separate defenses have merit and are not frivolous and specious.

Thereafter, on August 2, 1991, appellant received two orders of the Circuit Court for Palm Beach County, Probate Division executed on July 29, 1991 by the Honorable Michael E. Gersten, citing therein that appellant's

responsive issue raises no substantive issues, and in a further clearly erroneous manner contradicted himself by inserting attorney's fees to Nowlin and Nowlin in the sum of $9,000.00 in the order of payment of personal representative and attorney's fees and directed Klein and Walsh to be paid the sum of $1,460.00, and then, reversed those two amounts in the order of allocation of attorney's fees and court costs giving Nowlin and Nowlin $1,460.00 and Klein and Walsh $9,000.00.

PETITION OF CERTIORARI-
INTRODUCTORY PARAGRAPH

The petitioner, Robert M. Weichert, respectfully prays that a writ of certiorari issue to review and summarily reverse the mandate and decision of the District Court of Appeal of the State of

Florida-Fourth District filed August 21, 1992, the highest court of that state in which a decision could be had, where is drawn in question the validity of a statute of, or an authority exercised under the State of Florida, on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity; and also, where is drawn in question the constructicn of a clause of the Constitution, or of a treaty or statute of, or commission held under the United States, and the decision is against the title, right, privilege or exemption specially set up or claimed by either party.

ARGUMENT

That the core is this matter is the denial of due process of law. "Due

process of law" is the notion that the government cannot deprive a person of his life, liberty or property unless that person is given an opportunity to be heard. Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 542 (1985). As the Supreme Court recently reiterated, "the fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. Brock v. Roadway Express, Inc., 107 S.Ct. 1740, 1746 (1987) (quoting Mathews v. Eldridge, 424 U.S. 319, 333 (1976), in turn quoting Armstrong v. Manzo, 380 U.S. 545, 552 (1965)). More particularly, the person threatened with deprivation must be given "the opportunity to present reasons...why proposed action should not be taken...and an opportunity to present his side of the story". Loudermill, 470 U.S. at 546; Memphis Light, Gas and Water Division v.

Craft, 436 U.S. 1, 16, n. 17 (1978). This due process right to an opportunity to be heard is an intrinsic feature of the jurisdictional process. Logan v. Zimmerman Brush Co., 455 U.S. 422, 429, 433, 455 (1982).

The Florida District Court of Appeal, Fourth District by its *per curiam-affirmed* Order and Decision filed August 21, 1992, has sanctioned and condoned the lower court's, Circuit Court for Palm Beach County-Probate Division, practice and procedure which has deprived appellant "due process of law", and further, has deprived appellant an opportunity to be heard at a meaningful time and in a meaningful manner.

ISSUE NO. 1

THE CIRCUIT COURT FOR PALM BEACH COUNTY, PROBATE DIVISION ERRED IN PROCEEDING WITH THIS MATTER WITHOUT JURISDICTION.

Appellate has been denied due process in accordance with the Fourteenth Amendment of the United States Constitution and the mandate contained in Mullane v. Central Hanover Bank and Trust Co., 339 US 306, 313, 70 S. Ct. 652, 94 L. Ed. 865 (1950); Mennonite Board of Missions v. Adams, 462 US 791, and further, is in violation of Rules 5.040 and 5.042 of Florida Probate and Guardianship Rules and the mandates contained in Feather v. Sanko's Estate, App. 1980, 390 So. 2d 746; In re Odza's Estate, App. 4 Dist. 1983, 432 So. 2d 740; Nardi v. Nardi, App. 1980, 390 So. 2d 438; Hunt v. Estate of Hunt, App. 5 Dist. 1985, 475 So. 2d 1358.

To further exacerbate the failure of

giving appellant twenty days under Rule 5.040 aforementioned, the time of service for the hearing was not reasonable under the facts and circumstances of this case and pursuant to Rule 5.042(c) and (d) Florida Probate and Guardianship Rules, nor was appellant afforded an additional five days after service by mail. Appellant resides at 1380 Riverbend Drive, Baldwinsville, New York, over 1800 miles distance from Delray Beach, Florida, the venue of the hearing. Appellant received the papers Tuesday, July 23, 1991, presumably affording appellant five days to digest the detailed and voluminous information, to obtain proper discovery and to respond and travel to Delray Beach, Florida, which time was not even sufficient for regular mail to pass between appellant's New York State address and Delray Beach, Florida. In spite of this short time,

appellant did file objections and answers raising cogent issues for the court to decide. In an obviously arbitrary, capricious, parochial and prejudicial manner, the lower court summarily swept away all of appellant's defenses and issues, and entered its order accordingly, stating in a cavalier manner, erroneously, that appellant had received notice of the hearing when in fact he had not been properly served, acknowledging appellant's responsive pleading by stating that they raised no substantive issue and found appellant guilty of bad faith by virtue of frivolous litigation when appellant was duly and properly defending himself in accordance with the rules of procedure provided thereby. Appellant submits that the record clearly shows attorney Nowlin has the Honorable Michael E. Gersten, Circuit Court Judge, in his back pocket,

that the Judge without jurisdiction, signs any court order attorney Nowlin requests and that the conspiracy is designed to deprive appellant of the proceeds due him from his mother's estate, in violation of Title 42 USC §1983 of the U.S. Code.

ISSUE NO 2

THE LOWER COURT ERRED IN SIGNING AND EXECUTING TWO ORDERS DATED JULY 29, 1991 THAT CONTRADICT AND CONTRAVENE ONE ANOTHER.

A review of the two orders which are attached hereto as part of appellant's appendix, clearly indicate that the sums of money ordered to be paid to Nowlin and Nowlin and the Klein and Walsh are contradictory creating an irreparable confusion of the decision rendered by the lower court.

ISSUE NO. 3

THE LOWER COURT ERRED IN RENDERING TWO ORDERS DATED JULY 29, 1991 WITHOUT AFFORDING APPELLANT PROPER TIME TO RESPOND.

Appellant has covered this issue under Issue No. 1 of this brief, on the subject of jurisdiction, but pursues its coverage again here, if this court somehow finds that the lower court had jurisdiction.

The lower court violated Rule 5.040 of the Florida Probate and Guardianship Rules having to do with notice and providing in (a)(1) thereof twenty day response time for a pleading when formal notice is given.

The lower court violated Rule 5.042(c) of Florida Probate and Guardianship Rules wherein service for hearings which may not be heard ex parte, shall be served a reasonable time before the specified time for the hearing. Appellant reiterates

those cases cited and set forth in Issue Number 1 of this brief aforementioned.

CONCLUSION

The actions and order of Judge Michael E. Gersten, and affirmed by the Florida District Court, deprived appellant of his day in court, and due process as afforded by the U.S. Constitution. the argument of appellant herein justifies either a summary order of this Court reversing and remanding this matter back to the Florida Circuit Court for a trial of the issues raised, or a certificate from this Court to the Florida State Court for further review, pursuant to Article V, §3(6) Florida Constitution, Rule 9.03(a)(2)(C) Florida Rules of Appellate Procedure.

Dated: October 23, 1992.

Respectfully Submitted,

Robert M. Weichert, Pro Se
46 Oswego Street
Baldwinsville, New York 13027
(315) 635-3224
Attorney for Appellant

APPENDIX

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FOURTH DISTRICT

RE: ESTATE OF GRACE R. MASSETT, Deceased
Appellant(s),

vs.

Appellee(s).

CASE NO. 91-02347

L.T. CASE NO. 90-2547 CPS Palm Beach

August 21, 1992

BY ORDER OF THE COURT:

ORDERED that appellant's motion filed July 27, 1992 for rehearing with suggestion for rehearing en banc is hereby denied.

I hereby certify the foregoing is a true copy of the original court order.

Marilyn Beuttenmuller, Clerk

MANDATE

from

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FOURTH DISTRICT

This cause having been brought to this Court by appeal, and after due consideration the Court having issued its opinion;

YOU ARE HEREBY COMMANDED that such further proceedings be had in said cause as may be in accordance with the opinion of this Court, and with the rules of procedure and laws of the State of Florida.

WITNESS the Honorable Hugh S. Flickstein, Chief Judge of the District Court of Appeal of the State of Florida, Fourth District, and seal of the said Court at West Palm Beach, Florida on this day.

Date: September 11, 1992

Case No: 91-2347

County of Origin: Palm Beach

T.C. Case No: 90-2547 CPS

Style: Re:Estate of Grace R. Massett

Marilyn Beuttenmuller, Clerk
District Court of Appeal
Fourth District

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA. PROBATE DIVISION
FILE NO. 90-2547 CPS

IN RE: ESTATE OF
GRACE R. MASSETT,
DECEASED.
_____/

ORDER ON PETITION FOR ALLOCATION OF ATTORNEY'S FEES AND COURT COSTS

THIS CAUSE coming on this date to be heard on the Petition for allocation of attorneys' fees and court costs, and the Court having considered the sworn Petition of the Petitioner, the testimony of the Petitioner, and the argument of Counsel, and the Court having previously in this cause having awarded attorneys' fees in this cause to NOWLIN & NOWLIN, P.A. in the sum of $1,460.00 and to KLEIN & WALSH, P.A. in the sum of $9,000.00, and the Court having considered the provisions of Florida Statute 733.106(4) and the case of In Re Estate of Ruth Lane, Deceased, 562 S.2d 352 (Fla.App.4 Dist.1990), and the Court finding that

ROBERT M. WEICHERT has received notice of the hearing on the Petition for Allocation of Attorneys' Fees and Court Costs, having filed responsive pleading that raises no substantive issues, and the Court finding that ROBERT M. WEICHERT is guilty of bad faith by virtue of frivolous litigation and appeals against the Estate, and that his share of the state of Grace R. Massett should be charged for a portion of the attorneys' fees incurred by the Estate, and the Court finding that the bad faith actions of ROBERT M. WEICHERT have cost the Estate of Grace R. Massett additional attorneys' fees in the sum of $3,000.00, it is upon consideration

ORDERED AND ADJUDGED that the Personal Representative, in paying the attorneys' fees to NOWLIN & NOWLIN, P.A. and KLEIN & WALSH, P.A., shall pay the sum of $3,000.00 from the share of the Estate

that would otherwise be payable to ROBERT M. WEICHERT with the balance of the attorneys' fees to be paid from the residuary of the Estate prior to payment of distribution to the residuary beneficiaries.

DONE AND ORDERED at Delray Beach, Florida this the 29th day of July, 1991.

MICHAEL E. GERSTEN
CIRCUIT COURT JUDGE

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA. PROBATE DIVISION
FILE NO. 90-2547 CPS

IN RE: ESTATE OF
GRACE R. MASSETT,
DECEASED.
_____/

ORDER FOR PAYMENT OF PERSONAL REPRESENTATIVE'S FEES AND ATTORNEYS' FEES

THIS CAUSE coming on this day to be heard on the Petition of the Personal Representative of the Estate of Grace R. Massett for the payment of Personal Representative's fees and attorneys' fees, and the Court finding that all persons bearing the impact of the payment of such Personal Representative's fees and attorneys' fees have been served proper notice of this hearing, or have waived notice hereof, and have consented to the payment, and the Court having considered the Petitions, and answers and objections filed by ROBERT M. WEICHERT, and having found that the material allegations in the Petitions are true,

and the Court being fully advised in the premises, it is upon consideration

ORDERED AND ADJUDGED that the Personal Representative be and she is authorized and directed to pay to ELAINE W. ROBERTS, as Personal Representative, the sum of $3,600.00 payable out of the assets of the estate for her services rendered to the estate; and that the Personal Representative is authorized and directed to pay KLEIN & WALSH, P.A. the sum of $1,460.00, as attorney for the estate, payable out of the assets of the estate, for services rendered to the Personal Representative and to the estate; and that the Personal Representative is authorized and directed to pay NOWLIN & NOWLIN, P.A. the sum of $9,000.00, as attorneys for the estate, payable out of the assets of the estate, for services rendered to the Personal Representative and to the estate.

DONE AND ORDERED in Delray Beach, Florida this the 29th day of July, 1991.

MICHAEL E. GERSTEN
CIRCUIT COURT JUDGE

IN THE DISTRICT COURT OF
APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

IN RE: ESTATE OF
GRACE R. MASSETT,
DECEASED.
_____/

ROBERT M. WEICHERT,

Appellant,

vs.

ELAINE W. ROBERTS,

Appellee.

_____

CASE NO. 91-2347

MOTION FOR REHEARING WITH
SUGGESTION FOR REHEARING EN BANC

Pursuant to Section 11.2 of the Manual of Internal Operating Procedures of the Fourth District Court of Appeal of the State of Florida, Appellant suggests the appropriateness and moves for rehearing en banc.

Dated: July 23, 1992.

ROBERT M. WEICHERT
ROBERT M. WEICHERT, PRO SE
Attorney for Appellant
46 Oswego Street
Baldwinsville, New York 13027
(315) 635-3224

IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA FOURTH DISTRICT

IN RE: ESTATE OF
GRACE R. MASSETT,
DECEASED.
_____/

ROBERT M. WEICHERT,
Appellant,
vs.

ELAINE W. ROBERTS,
Appellee.
_____

CASE NO. 91-2347

MOTION FOR REHEARING

ROBERT M. WEICHERT, affirms and declares under penalties of perjury the following motion for rehearing, pursuant to Section 11.2 of the Manual of Internal Operating Procedures of the Fourth District Court of Appeal of the State of Florida:

1. Attached hereto is the Order of this Court for which appellant asks for rehearing.

2. Appellant restates his statement of facts and issues as set forth in his brief dated January 16, 1992.

3. That the core of this matter is the denial of due process of law. "Due process of law" is the notion that the government cannot deprive a person of life, liberty or property unless that person is given an opportunity to be heard. Cleveland Bd. of Educ. v. Loudermill, 470 US 532, 542 (1985). As the Supreme Court recently reiterated, "the fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. Brock v. Roadway Express, Inc., 107 S.Ct. 1740, 1746 (1987) (quoting Mathews v. Eldridge, 424 US 319, 333 (1976), in turn quoting Armstrong v. Manzo, 380 US 545, 552 (1965)). More particularly, the person threatened with deprivation must be given "the opportunity to present reasons...why proposed action should not be taken...and an opportunity to present his side of the

story". Loudermill, 470 US at 546; Memphis Light, Gas and Water Division v. Craft, 436 US 1, 16, n. 17 (1978). This due process right to an opportunity to be heard is an intrinsic feature of the judicial process. Logan v. Zimmerman Brush Co., 455 US 422, 429, 433, 455 (1982).

4. This Court by its *per curiam-affirmed* Order and Decision filed July 15, 1992, has sanctioned and condoned the lower court's, Circuit Court for Palm Beach County-Probate Division, practice and procedure which has deprived appellant "due process of law", and further, has deprived appellant an opportunity to be heard at a meaningful time and in a meaningful manner.

5. Appellant suggests the appropriateness of a rehearing en banc.

Dated: July 23, 1992.

ROBERT M. WEICHERT
ROBERT M. WEICHERT, PRO SE
Attorney for Appellant
46 Oswego Street
Baldwinsville, New York 13027
(315) 635-3224

IN THE DISTRICT COURT OF APPEAL OF
THE STATE OF FLORIDA FOURTH DISTRICT
JULY TERM 1992

IN RE: ESTATE OF
GRACE R. MASSETT,
DECEASED.

_____/

ROBERT M. WEICHERT,
Appellant,
vs.

ELAINE W. ROBERTS,
Appellee.

_____

CASE NO. 91-2347

Decision Filed July 15, 1992

Appeal from the Circuit Court for Palm Beach County; Michael J. Gersten, Judge.

Robert W. Weichert, Baldwinsville, New York, pro se appellant.

James W. Nowlin, Jr., of Nowlin and Nowlin, P.A., Delray Beach, and Larry Klein of Klein & Walsh, P.A., West Palm Beach, for Appellee-Elaine W. Roberts.

PER CURIAM.

AFFIRMED.

GLICKSTEIN, C.J., DOWNEY and FARMER, JJ., concur.

IN THE DISTRICT COURT OF APPEAL OF
THE STATE OF FLORIDA, FOURTH DISTRICT

IN RE: ESTATE OF
GRACE R. MASSETT,
DECEASED.

_____/

ROBERT M. WEICHERT,
Appellant,
vs.
ELAINE W. ROBERTS,
Appellee.

_____

CASE NO. 91-2347

AFFIDAVIT OF SERVICE BY MAIL
STATE OF NEW YORK]
COUNTY OF ONONDAGA] SS.:

I, Donna J. Seymour, being duly sworn, depose and say: I am not a party to the within action, an over 18 years of age and reside at 115 Cranberry Drive, Liverpool, New York.

That on July 24, 1992 deponent served the within Motion for Rehearing with Suggestion for Rehearing En Banc by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, addressed to each of the following persons at the last known address set forth after each name:

James W. Nowlin, Atty, 50 S.E. Fourth Avenue, Delray Beach, Fl 33483.

Larry Klein, Atty, Suite 503-Flagler Center, 501 South Flagler Drive, West Palm Beach, Fl 33401.

Donna J. Seymour

Sworn to before me this
24th day of July, 1992.

JANINE DUGER
Notary Public

ROBERT M. WEICHERT
46 Oswego Street
Baldwinsville, New York 13027
Tel. & Fax No. (315) 635-3224

July 23, 1991

Clerk of Circuit Court-Probate Div.
200 W. Atlantic Avenue
Delray Beach, Florida 33444

In Re: Estate of Grace R. Massett
Deceased
File # 90-2547-CPS

Gentlemen/Ladies:

Enclosed please find for filing the Respondent's Answer to the accounting and various petitions filed in this matter July 17, 1991.

These matters are noticed to be heard on July 29, 1991 at 2:30 PM. Because of only six(6) day's notice, I must advise that it is physically impossible for me to attend on July 29, 1991. I request an adjournment of this date of hearing for at least sixty (60) days to allow me sufficient time to develop discovery in this matter. Please advise.

Very truly yours,

R.M. Weichert
phc: Nowlin & Nowlin
Harold R. Weichert

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA. PROBATE DIVISION
FILE NO. 90-2547 CPS

IN RE: ESTATE OF
GRACE R. MASSETT,
DECEASED.
_____/

OBJECTIONS TO FINAL ACCOUNTING TO PERSONAL REPRESENTATIVE

COMES NOW, the respondent, ROBERT M. WEICHERT, responding to the final accounting of Elaine W. Roberts, as Personal Representative in the above captioned estate.

1. Respondent objects to the short amount of time given to respond to the final accounting. Respondent was notified, although improperly served, July 22, 1991 and only given six (6) days to respond, which time is not sufficient for even regular mail to pass between New York State, respondent's address, and Florida. In addition, the final accounting filed by the Personal Representative, is detailed, voluminous

and respondent cannot ascertain the accuracy of the information provided therein, without due and proper discovery, all in violation of the due process clause of the Fourteenth Amendment of the United States Constitution and the mandate contained in Mullane v. Central Hanover Bank & Trust Co., 339 US 306, 313 (1950).

2. That the Personal Representative has failed to mention and account for items of valuable Stickley furniture and other personal belongings of the decedent, which upon information and belief, said Personal Representative has converted to her own use and benefit.

3. That because of improper service of process on respondent, this Court lacks jurisdiction to hear and determine this matter.

WHEREFORE, respondent prays for an Order denying the final accounting of the

Personal Representative or, in the alternative, to provide reasonable and sufficient time for discovery procedures in behalf of respondent and for such other and further relief as to the Court may seem just and proper.

Dated: July 23, 1991.

ROBERT M. WEICHERT, PRO SE
Attorney for Respondent
46 Oswego Street
Baldwinsville, New York 13027
(315) 635-3224

To: Nowlin & Nowlin, P.A.
Attorney for Petitioner
50 S.E. Fourth Avenue
Delray Beach, Florida 33483

State of New York]
County of Onondaga] ss.:

Robert M. Weichert, under penalties of perjury, declares that he has read the foregoing and the facts alleged are true to the best of his knowledge and belief.

ROBERT M. WEICHERT

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA. PROBATE DIVISION
FILE NO. 90-2547 CPS

IN RE: ESTATE OF
GRACE R. MASSETT,
DECEASED.
_____/

ANSWER AND OBJECTIONS TO THE PETITION OF ELAINE W. ROBERTS, FOR PERSONAL REPRESENTATIVE'S FEE

COMES NOW, the respondent, ROBERT M. WEICHERT, answering the petition of Elaine W. Roberts for Personal Representative's fee, and alleges as follows:

1. That the Court lacks jurisdiction to hear and determine this matter.

FOR ANOTHER AFFIRMATIVE AND SEPARATE DEFENSE, RESPONDENT ALLEGES:

2. That the Personal Representative's application for fee is premature since it is anticipated that respondent will be allowed due process under the Fourteenth Amendment of the United States Constitution to engage in discovery proceedings which may possibly indicate

wrongdoing on the part of said Personal Representative in withholding and hiding assets of this estate, and which activities would preclude her from receiving a fee.

FOR ANOTHER AND AFFIRMATIVE AND SEPARATE DEFENSE, RESPONDENT ALLEGES:

3. That respondent denies the allegations set forth in paragraph's 2 and 3 of the petition and further, objects to the conclusionary allegation of petitioner as to the reasonableness of her compensation.

WHEREFORE, respondent prays for an Order denying the petition of Elaine W. Roberts for a Personal Representative's fee, or, in the alternative, to allow respondent sufficient and reasonable time in discovery to develop, verify and amplify the allegations contained in her petition and for such other and further relief as to the Court may seem just and

proper.

Dated: July 23, 1991.

ROBERT M. WEICHERT, PRO SE
Attorney for Respondent
46 Oswego Street
Baldwinsville, New York 13027
(315) 635-3224

To: Nowlin & Nowlin
Attorney for Petitioner
50 S.E. Fourth Avenue
Delray Beach, Florida 33483

State of New York]
County of Onondaga] ss.:

ROBERT M. WEICHERT, under penalties of perjury, declares that he has read the foregoing Answer and Objections, and the facts alleged are true to the best of his knowledge and belief.

ROBERT M. WEICHERT

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA. PROBATE DIVISION
FILE NO. 90-2547 CPS

IN RE: ESTATE OF
GRACE R. MASSETT,
DECEASED.
_____/

RESPONDENT'S ANSWER TO PETITION FOR ATTORNEY'S FEES AND COURT COSTS

COMES NOW, the respondent, ROBERT M. WEICHERT, answering the petition of Elaine W. Roberts, for allocations of attorneys' fees and court costs as follows:

1. Respondent admits the first sentence of paragraph #1 of the petition, but denies the remainder thereof.

2. Denies each and every other allegation.

FOR ANOTHER AFFIRMATIVE AND SEPARATE DEFENSE, RESPONDENT ALLEGES:

3. That the Court lacks jurisdiction to hear and determine this matter.

FOR ANOTHER AND AFFIRMATIVE AND SEPARATE DEFENSE, RESPONDENT ALLEGES:

4. That petitioner has failed to provide respondent with sufficient time, no more than six (6) days after notice of hearing, to attend and be heard on the issues of this matter, in violation of the Fourteenth Amendment to the United States Constitution and the mandate contained in Mullane v. Central Hanover Bank & Trust Co., 339 US 306, 313 (1950).

WHEREFORE, respondent demands an Order denying the petition of Elaine W. Roberts for allocation of attorney's fees and court costs.

Dated: July 23, 1991.

ROBERT M. WEICHERT, PRO SE
Attorney for Respondent
46 Oswego Street
Baldwinsville, New York 13027
(315) 635-3224

To: Nowlin & Nowlin, P.A.
Attorney for Petitioner
50 S.E. Fourth Avenue
Delray Beach, Florida 33483

State of New York]
County of Onondaga] ss.:

ROBERT M. WEICHERT, under penalties of perjury, declares that he has read the foregoing Answer, and the facts alleged are true to the best of his knowledge and belief.

ROBERT M. WEICHERT

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA. PROBATE DIVISION
FILE NO. 90-2547 CPS

IN RE: ESTATE OF
GRACE R. MASSETT,
DECEASED.
_____/

RESPONDENT'S ANSWER FOR PETITION OF ATTORNEY'S FEES.

COMES NOW, the respondent, ROBERT M. WEICHERT, answering the petition of Elaine W. Roberts, as Personal Representative of this estate for an Order establishing attorney's fees, as follows:

1. Lacks jurisdiction as to form a belief as to all of the paragraphs in the petition.

FOR AN AFFIRMATIVE AND SEPARATE DEFENSE, RESPONDENT:

2. Denies that the proposed attorney's fees alleged in paragraph #4 of the petition are reasonable.

FOR ANOTHER AFFIRMATIVE AND SEPARATE DEFENSE, RESPONDENT ALLEGES:

3. That the Court lacks jurisdiction to hear and determine this matter.

FOR ANOTHER AFFIRMATIVE AND SEPARATE DEFENSE, RESPONDENT ALLEGES:

4. That petitioner has not allowed respondent sufficient time to respond to her notice of hearing on July 29, 1991, allowing only six (6) days for respondent to attend, wherein respondent resides in New York State and the place of the hearing is in Delray Beach, Florida, orchestrating a physical impossibility for respondent to attend.

WHEREFORE, respondent demands an Order denying petitioner's application for attorney's fees, or in the alternative, adjourning he date of hearing with sufficient amount of time for respondent to engage in and develop discovery to develop, verify and amplify the allegations contained in the petition and for such other and further relief as to

the Court may seem just and proper.

Dated: July 23, 1991.

ROBERT M. WEICHERT, PRO SE
Attorney for Respondent
46 Oswego Street
Baldwinsville, New York 13027
(315) 635-3224

To: Nowlin & Nowlin, P.A.
Attorney for Petitioner
50 S.E. Fourth Avenue
Delray Beach, Florida 33483

State of New York]
County of Onondaga] ss.:

ROBERT M. WEICHERT, under penalties of perjury, declares that he has read the foregoing Answer, and the facts alleged are true to the best of his knowledge and belief.

ROBERT M. WEICHERT

NOWLIN AND NOWLIN, P.A.
Attorneys and Counselors at Law
50 S.E. Fourth Avenue
Delray Beach, Florida 33483
(407) 276-9754
Fax(407) 276-3859

July 17, 1991

Mr. Robert M. Weichert
46 Oswego Street
Baldwinsville, New York 13027

Dr. Harold R. Weichert
103 Dorset Road
Syracuse, New York 13210

Re: Estate of Grace R. Massett

Gentlemen:

Prior to closing your mother's estate, I wish to resolve the issue of attorneys' fees and the personal representative's fee. I enclose copies of the following documents that have been filed today with the Court:

1. Notice of Hearing.
2. Final Accounting of Personal Representative.
3. Petition for Personal Representative's Fee.
4. Petition for Allocation of Attorneys' Fees and Court Costs.
5. Petition for Attorneys' Fee with Exhibits A and B attached.
6. Affidavit as to Attorneys' Fees and Personal Representative's Fee.

If you agree with the compensation for the attorneys and personal representative

as set forth on the enclosed petitions and affidavits, I would appreciate your signing and returning one copy of each of the enclosed consents in the self-addressed, stamped envelope provided for your convenience.

Yours, truly,

JAMES W. NOWLIN, JR.
For the Firm

JNJr:rdq
Encl.
cc: Elaine W. Roberts

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA. PROBATE DIVISION
FILE NO. 90-2547 CPS

IN RE: ESTATE OF
GRACE R. MASSETT,
DECEASED.
_____/

NOTICE OF HEARING

To: Robert M. Weichert
46 Oswego Street
Baldwinsville, New York 13027

Harold R. Weichert
103 Dorset Road
Syracuse, New York 13210

PLEASE TAKE NOTICE that the Petitioner, ELAINE W. ROBERTS, as Personal Representative of the Estate of Grace R. Massett, by and through her undersigned attorney, will call up for hearing before The Honorable Michael Gersten in Chambers at 200 West Atlantic Avenue, Delray Beach, Florida, on July 29, 1991, at 2:30 P.M., Petitioner's Petition for Personal Representative's Fee, Petition for Attorneys' Fees, and Petition for Allocation of Attorneys'

Fees.

I HEREBY CERTIFY that true copy of the above and foregoing Notice or Hearing was furnished to the above named by mail, this the 17th day of July, 1991.

NOWLIN & NOWLIN, P.A.
Attorneys for Petitioner
50 S.E. Fourth Avenue
Delray Beach, Florida 33483
(407) 276-9754

JAMES W. NOWLIN, JR.
Florida Bar No. 59148

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA. PROBATE DIVISION
FILE NO. 90-2547 CPS

IN RE: ESTATE OF
GRACE R. MASSETT,
DECEASED.
_____/

FINAL ACCOUNTING OF PERSONAL REPRESENTATIVE

FOR THE PERIOD COMMENCING: June 4, 1990 THROUGH July 15, 1991.

SUMMARY

I. Starting Balance		
Assets per Inventory		$170,333.51
II. Receipts		
Schedule A-Income	$9,847.64	
Principal	7,120.61	
		16,968.25
Sub-Total		$187,301.76
III. Disbursements and Distributions		
Schedule B-Income	3,158.59	
Principal	43,722.53	
		46,881.12
Sub-Total		140,420.64
IV. Capital Transaction & Adjustments		
Schedule C-New Gain or (Loss)		(363.00)
V. Assets on Hand at Close of Accounting Period		
Schedule D-Cash and other Assets		140,420.64

Under penalties of perjury, I declare that I have read and examined this accounting and that the facts and figures set forth in the above Summary and the attached Schedules are true, to the best of my knowledge and belief, and that it is a complete report of all cash and property transactions and of all receipts and disbursements by me as personal representative of the estate of GRACE R. MASSETT, deceased, from June 4, 1990 through July 15, 1991.

ELAINE W. ROBERTS
Personal Representative

NOWLIN & NOWLIN, P.A.
Attorneys for Petitioner
50 S.E. Fourth Avenue
Delray Beach, Florida 33483
(407) 276-9754

By: _____
JAMES W. NOWLIN, JR.
Florida Bar No. 59148

SCHEDULE A-RECEIPTS DURING PERIOD

Date		Principal	Income
06/04/90	Key Bank	3,000.00	
07/06/90	State Farm (Insurance)	4,884.00	
07/06/90	AARP (Insurance)	115.61	
07/23/90	AARP	1,056.74	
08/03/90	Manor Care (Refund)	165.11	
08/14/90	Social Security	255.00	
08/30/90	Medicare	71.59	
08/30/90	Medicare	116.29	
11/08/90	Medicare	110.24	

11/08/90 AARP (Insurance)	19.81	
01/02/91 IRS Refund Ck	12.75	
02/19/91 Balance in personal account	40.50	
07/15/91 Net from sale of Lot 16	(1,503.88)	
06/29/90-06/28/91 CMA Dividends		8,624.49
TOTAL	7,120.61	8,624.49

SCHEDULE B-DISBURSEMENTS & DISTRIBUTIONS

DISTRIBUTIONS

Date	Principal	Income
6/18/90 Pharmacy Corp. of America	104.07	
6/5/90 Elaine W. Roberts(phone & plants)	12.32	
6/13/90 AARP Insurance Premium	40.50	
6/7/90 Manor Care (June 1990)	3297.94	
6/18/90 Key Bank (outstanding ck)	136.33	
6/8/90 Scobee,Ireland, Potter (Funeral bill)	1487.00	
7/27/90 CMA (regular acct) fee		80.00
10/22/90 CMA (Estate acct) fee		100.00
11/7/90 Nowlin & Nowlin, PA(court cost)		185.50
11/7/90 Elaine W. Roberts(reimbursement, phone calls, cemetery, appraisals)	296.13	

11/21/90 US Postmaster (postage)		7.42
11/30/90 Southern Bell		13.54
12/12/90 St. Lucie County Tax Collector		762.62
12/20/90 Dr. Tim Reid	35.92	
12/20/90 St. Cloud Hospital	41.20	
12/20/90 Pharmacy Corporation	27.86	
12/20/90 Melbourne Neurologic	267.55	
12/20/90 Internal Revenue Service (1988)	653.00	
12/28/90 Southern Bell		9.51
12/28/90 Nowlin & Nowlin(Atty fee)		2000.00
1/14/91 M.L.coin storage fee	15.12	
2/15/91 Southern Bell	7.69	
3/5/91 Southern Bell	9.66	
4/2/91 Southern Bell	14.71	
4/10/91 IRS (1989 taxes)	13.39	
4/25/91 Key Bank (search fee)	120.00	
4/29/91 M.L.coin storage fee	13.84	
5/1/91 Southern Bell	10.83	
5/31/91 Southern Bell	7.47	
TOTAL	6612.53	3158.59

PARTIAL DISTRIBUTION:

11/7/90 Elaine W. Roberts	5,000.00
11/10/90 Jeffrey Roberts	1,000.00
11/15/90 Robert F. Scott	1,000.00
11/16/90 William Weichert	3,000.00
11/16/90 Vera Scott	500.00
11/16/90 Tom Scott	1,000.00
11/16/90 Robby Weichert	3,000.00
11/16/90 Cyrus Weichert	3,000.00
11/19/90 Annie Weichert	3,000.00
11/19/90 Leona Murphy	500.00
11/19/90 Jewelry	1,110.00
11/22/90 Erin Roberts	1,000.00
11/22/90 James Roberts	1,000.00
1/15/91 Bridgeport Methodist Church	1,000.00
1/15/91 Syracuse Unity Church	500.00
1/31/91 Wendy Sue Weichert	3,000.00
2/7/91 Susan Weichert	2,000.00
2/14/91 James Weichert	3,000.00
3/22/91 Robert Scott Weichert	3,000.00
TOTAL	43,722.53

SCHEDULE C-CAPITAL TRANSACTIONS AND ADJUSTMENTS

CHANGE IN VALUE OF METALS:

Mapleleaf coins	12.00
Silver bars	(375.00)
	(363.00)

SCHEDULE D-ASSETS ON HAND AT CLOSE OF ACCOUNTING PERIOD

Lots 6 and 7, Block 36, Indian River Estates, Unit 4, according to Map 34/02N, of the Public Records of St. Lucie County, Florida.(Estimated)	25080.00
Cash	10.93
10 Mapleleaf coins @ $376.25	3762.00
500 oz. of .999 silver bars @ 4.35/oz.	2175.00
Pending receipt from sale of Lot 16.	13146.12
Cash Management Account with Merrill Lynch Pierce Fenner & Smith, Inc.	95883.59
	$140420.64

EXECUTED this 15th day of July, 1991.

ELAINE W. ROBERTS
Elaine W. Roberts, Personal Representative of the Estate of GRACE. R. MASSETT

I CERTIFY that a copy of the above and foregoing Final Accounting of Personal Representative was served on the following:

ROBERT M. WEICHERT
46 Oswego Street
Baldwinsville, New York 13027

HAROLD R. WEICHERT
103 Dorset Road
Syracuse, New York 13210

by U.S. Mail this the 17th day of July, 1991.

NOWLIN & NOWLIN, P.A.
Attorneys for Petitioner
50 S.E. Fourth Avenue
Delray Beach, Florida 33483

by: JAMES W. NOWLIN, JR.
JAMES W. NOWLIN, JR.
FLORIDA BAR NO. 59148

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA. PROBATE DIVISION
FILE NO. 90-2547 CPS

IN RE: ESTATE OF
GRACE R. MASSETT,
DECEASED.
_____/

PETITION FOR PERSONAL REPRESENTATIVE'S FEE

Petitioner, ELAINE W. ROBERTS, as personal representative of this estate alleges:

1. Petitioner was appointed personal representative of this estate by order of this court dated September 6, 1990 and letters of administration were issued on September 6, 1990.

2. Petitioner has furnished services to the estate, said services being more fully described on the affidavit attached hereto as Exhibit A.

3. As a result of the performance of the duties described, petitioner is entitled to reasonable compensation, and petitioner believes that reasonable

compensation is in the amount of $3,600.00.

4. The names of all persons bearing the impact of the payment of the personal representative's fee are as follows:

Elaine W. Roberts
Harold R. Weichert
Robert M. Weichert

Petitioner requests that an order be entered authorizing and directing the payment of the sum of $3,600.00 to petitioner for services rendered by petitioner as personal representative of the estate.

Under penalties of perjury, I declare that I have read the foregoing and the facts alleged are true to the best of my knowledge and belief.

Executed this 15th day of July, 1991.

ELAINE W. ROBERTS
ELAINE W. ROBERTS, Petitioner

Attorney for Petitioner:

NOWLIN & NOWLIN, P.A.
50 SE Fourth Avenue
Delray Beach, Florida 33483
(407) 276-9754

by:JAMES W. NOWLIN, JR.
JAMES W. NOWLIN, JR.
FLORIDA BAR NO. 59148

I CERTIFY that a copy hereof has been furnished to:

Robert M. Weichert
46 Oswego Street
Baldwinsville, New York 13027

Harold R. Weichert
103 Dorset Road
Syracuse, New York 13210

by mail this 17th day of July, 1991.

JAMES W. NOWLIN, JR.
JAMES W. NOWLIN, JR., Attorney

EXHIBIT A

SERVICES

DATE		HOURS
June/ July/ Aug. 1990	Research medical records file claims with Medicare and AARP	33.00
9/6/90	Telephone call to Merrill Lynch re estate acct.	.50
	Telephone call to Anne Weichert, granddaughter re bequest in will.	1.00
9/8/90	Tel. call to Pharmacy Corp.	.50
9/9/90	Tel. call to Harold Weichert; review documents; research records.	1.00
9/10/90	Misc. tel. calls; review documents.	1.00
9/11/90	Tel. calls to Dr. Timothy Reid and Melbourne Neurological; conference with atty James W. Nowlin, Jr.	1.50
9/12/90	Conference with Mr. Nowlin.	.50
9/14/90	Tel. call to Merrill Lynch in Winter Park; conference with Mr. Nowlin; work on inventory.	1.50
9/18/90	Tel. call to Anne Weichert; research and review documents; conference with Mr. Nowlin.	2.00
9/19/90	Conference with Mr. Nowlin.	.50
9/21/90	Conference with Mr. Nowlin.	.50
9/23/90	Research and review documents.	1.00

9/24/90	Conference with Mr. Nowlin's.	.50
9/25/90	Miscellaneous tel. calls and review documents.	.50
9/27/90	Tel. conference with Mr. Nowlin.	.50
9/29/90	Tel. call to Harold Weichert and review documents.	1.50
10/1/90	Tel. call to Smith Jeweler re appraisal.	.25
10/2/90	Conference with Smith Jeweler.	.50
10/3/90	Tel. call to Smith Jeweler.	.25
10/4/90	Tel. call to Anne Weichert.	.25
10/7/90	Tel. calls to Ray Massett, husband; file Medicare and AARP claims.	1.00
10/9/90	Tel. calls to Merrill Lynch, Blue Cross, Medicare, Smith Jeweler re appraisal, attorney's office.	1.00
10/10/90	Conference with Mr. Nowlin.	.25
10/18/90	Tel. call to atty's office.	.25
10/19/90	Tel. calls to IRS; conference with Bonnie Davis at atty's office re tax returns.	2.00
10/20/90	Tel. calls to Harold Weichert and James Roberts (son).	1.00
10/22/90	Work on tax returns.	1.00
10/25/90	Tel. calls (2) to Merrill Lynch.	.50
11/2/90	Work on tax returns.	1.00
11/3/90	Trip to Ft. Pierce to view property (184 mi)	4.50

11/5/90	Tel. calls (2) to to Merrill Lynch.	.50
11/6/90	Conference with Mr. Nowlin.	1.00
11/8/90	Review documents; conference with Mr. Nowlin.	1.00
11/9/90	Tel. calls to Merrill Lynch and atty's office; prepare notes and releases.	2.00
11/10/90	Tel. calls to Anne Weichert and James Roberts; mailed releases and notes.	1.50
11/16/90	Mailed checks, releases and notes.	1.00
11/17/90	Mailed checks, releases and notes.	.50
11/19/90	Mailed checks, releases and notes.	1.00
11/20/90	Shipped rings and silver to Vera and Tom Scott.	1.00
11/30/90	Deposit $40.50 and check in Merrill Lynch account.	.50
12/2/90	Tel. calls to Harold Weichert and Anne Weichert.	1.00
12/3/90	Conference with Mr. Mr. Nowlin.	.50
12/6/90	Tel. conf. with atty's office.	.25
12/9/90	Tel. call to IRS in Atlanta re 1988 tax ret.	1.00
12/13/90	Tel. call to IRS in Atlanta.	1.00
12/20/90	Tel. call to Merrill Lynch re statements.	.50
12/21/90	Tel. call to Merrill Lynch re statements.	.50
12/26/90	Tel. call to Unity of Syracuse re bequest.	.25

12/28/90	Conference with Mr. Nowlin.	1.00
12/29/90	Tel. conf. with Sue Weichert re releases.	.25
12/31/90	Tel. call to Rick Sane at Merrill Lynch; Leona Murphy re bequest.	.25
1/2/91	Tel. conf. with Rick Sane (M-L).	.25
1/4/91	Tel. conf. with Rick Sane; tel. call to atty's offc.	.50
1/6/91	Sent releases and checks.	1.00
1/14/91	Tel. conf. with atty's office.	.25
1/17/91	Tel. conf. with atty's office.	.25
1/20/91	Tel. calls to Anne Weichert and Harold Weichert.	1.00
1/22/91	Tel. conf. with atty's office.	.25
1/23/91	Research; tel. conf. with atty's office.	.50
1/25/91	Research; tel. conf. with atty's office.	1.50
1/26/91	Research re court case of Robert Weichert.	2.00
1/27/90	Research; tel. conf. with atty's office.	.50
1/28/91	Research; tel. conf. with atty's office.	.50
1/26/91	Tel. calls to Harold Weichert and Ray Massett re furniture and estate assets.	1.00
2/2/91	Tel. conf. with Harold Weichert in Miami.	.50
2/3/91	Conf. with Harold in Miami re Robert Weichert's mother was not a Fla. resident (122 mi.)	4.00
2/13/91	Tel. call to Rick Sane-ML	.25
2/14/91	Tel. call to Harold Weichert in Syracuse.	.25

2/15/91	Conf. with Mr. Nowlin.	.25
2/22/91	Tel. calls to Linda Newman, real estate agent in Ft. Pierce; and Harold Weichert.	.50
2/24/91	Tel. conf. with Harold Weichert.	.50
2/25/91	Tel. calls to Linda Newman and Mr. Nowlin.	.25
2/26/91	Tel. conf. with Linda Newman.	.25
2/27/91	Tel. call from Linda Newman.	.50
2/28/91	Tel. calls to/from Linda Newman.	1.00
3/1/91	Review contract for sale 3/2/91 Review contract for sale in Ft. Pierce.	1.00
3/2/91	Review contract; prepare for mailing.	1.00
3/4/91	Conf. with Mr. Nowlin re contract.	1.50
3/3/91	Tel. call to Harold Weichert re status of estate.	.50
3/9/91	Research re 1990 1040.	2.00
3/10/91	Research re 1990 1040.	2.00
3/11/91	Research re 1990 1040.	1.00
2/13/91	Meeting with Bonnie at atty's office re tax returns.	.50
3/15/91	Misc. tel. calls and correspondence re tax return.	1.00
3/16/91	Tel. call to Ray Massett.	.50
3/18-3/20/91	Misc. tel. calls re 1989 1040.	1.00
3/29/91	Misc. tel. calls re 1989 1040.	.50
4/2/91	Misc. tel. calls and research re 1988/1989 1040.	1.50

4/9/91	Conf. with atty's ofc re 1990 1040.	.50
4/11-4/12/91	Tel. call to Key Bank re 1990 1040.	.50
4/13/91	Research re 1990 1040.	.50
4/15-4/16/91	Tel. confs. with Donna Summers, realtor, re lots in Ft. Pierce.	.50
4/18/91	Tel. calls to Donna Summers re lots.	.50
4/23/91	Work on 1989 tax return.	3.00
4/24/91	Conf. with Mr. Nowlin.	.50
5/1/91	Tel. conf. with atty's office.	.50
5/2/91	Tel. conf. with atty's office; correspondence re tax returns and sale of lots.	.50
5/15/91	Tel. conf. with atty's office re 1989 tax return.	.50
5/26/91	Pay bills.	.25
5/22/91	Tel. conf. with Mr. Nowlin.	.25
5/31/91	Review correspondence from Mr. Nowlin.	.25
6/2/91	Tel. call to Harold Weichert.	1.00
	Tel. call to James Roberts.	.50
6/24/91	Tel. conf. with Mr. Nowlin.	.25
6/25/91	Trip to atty's office.	.50
	TOTAL HOURS	120.00

My average charge during the years 1990 and 1991 was $30.00 per hour for similar services.

ELAINE W. ROBERTS
ELAINE W. ROBERTS, Personal Representative of the Estate of GRACE R. MASSETT.

Sworn to and subscribed before me this 15th day of July, 1991.

RUTH D. QUINN
Notary Public
State of Florida at Large
My Commission Expires:

(Seal)

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA. PROBATE DIVISION. FILE NO. 90-2547 CPS

IN RE: ESTATE OF
GRACE R. MASSETT,
DECEASED.
_____/

PETITION FOR ALLOCATION OF ATTORNEYS' FEES AND COURT COSTS

COMES NOW, Petitioner, ELAINE W. ROBERTS, as Personal Representative of the Estate of GRACE R. MASSETT, pursuant to the provisions of Florida Statute 733.106(4), and petitions this Court for an Order assessing attorneys' fees and court costs against the share of the estate passing to ROBERT WEICHERT under the Last Will and Testament of GRACE R. MASSETT for reason that ROBERT WEICHERT is guilty of bad faith by virtue of frivolous litigation and appeals against the estate. Petitioner would show unto the Court as follows:

1. Petitioner has retained the services of the law firms of NOWLIN & NOWLIN, P.A.

and KLEIN & WALSH, P.A. to represent her in this matter. The affidavit of JAMES W. NOWLIN, JR. shows that he has expended 45.6 hours in connection with this estate, of which 25.2 hours were expended in connection with ROBERT WEICHERT'S frivolous litigation, and LARRY KLEIN'S affidavit shows that he expended 7.3 hours, all in connection with the appeal of ROBERT WEICHERT. As shown on their affidavits both of these attorneys customarily charge $200.00 per hour for their services.

2. ROBERT WEICHERT was formerly an attorney and, although he has been disbarred in New York, he is charged with knowledge of legal proceedings and yet he has proceeded so recklessly in connection with this estate as to evidence bad faith in his actions as follows:

A. ROBERT WEICHERT responded to the Petition for Administration and Formal

Notice served on him on July 12, 1990 by entering a "special appearance" and written defense, notice to admit and demand for interrogatories without making the proceedings adervarial.

B. ROBERT WEICHERT sent a Notice of Taking Deposition on Oral Examination on September 11, 1990. The Deposition was scheduled to be held "at the Clerk's Office of the Circuit Court for Palm Beach County, 300 North Dixie Highway, West Palm Beach" on February 19, 1991 at 10:00 a.m. No room was given, no explanation was given why some office of the clerk in West Palm Beach was being scheduled, why West Palm Beach was being selected when the proper venue was Delray Beach, and again no attempt was made to make this an adversarial proceeding.

C. Notice was served on ROBERT WEICHERT that the Petition for Administration would be considered by the

Court on September 6, 1990. Petitioner was in Court and gave testimony. ROBERT WEICHERT did not attend, did not send a representative, and did not send a court reporter.

D. ROBERT WEICHERT filed a Notice of Appeal on September 19, 1990 and Amended Notice of Appeal on September 28, 1990, which essentially argued factual matters regarding residence which was not on record, and a complaint that Florida Statute 733.303(1)(a) which made convicted felons ineligible to serve as personal representatives unconstitutional. The decision of this Court awarding letters was upheld by the Fourth District Court of Appeal per curiam affirmed.

E. ROBERT WEICHERT filed a Motion for Stay in the District Court of Appeals of Alaska on October 15,m 1990 asking this Court to stay the Circuit Court of Palm

Beach County, Florida. This was amended on November 7, 1990 to show the District Court of Florida. The Stay was denied by the District Court on December 3, 1990.

F. On November 7, 1990, while the Motion for Stay was still pending in the District Court of Appeals, ROBERT WEICHERT filed another Motion for Stay in the Circuit Court.

G. On January 30, 1991, the Clerk of the District Court of Appeals sent an acknowledgement of a Petition for Writ of Mandamus filed by ROBERT WEICHERT although no opy of the Petition for Writ of Mandamus has been received by Petitioner's attorney. Subsequently, it was learned that ROBERT WEICHERT filed a Petition for Writ of Mandamus asking that the District Court of Appeals direct the Circuit Court to rule on his Motion for Stay. When it was pointed out that ROBERT WEICHERT had not requested a hearing in

connection with his Motion for Stay, the District Court of Appeals on January 30, 1991 denied the Petition for Writ of Mandamus.

H. On March 15, 1992 ROBERT WEICHERT sent a Notice of Hearing to Petitioner's attorney stating that a hearing on his Motion to Stay was scheduled for March 27, 1991 at 10:00 a.m. before Judge Gersten. On March 27, 1991, the attorney for the Personal Representative went to the Court and learned that no hearing had been scheduled with the Judge's secretary. The attorney for the Personal Representative then met with Judge Gersten who considered the Motion based on the Notice of Hearing which had been sent by ROBERT WEICHERT and denied the Petition for Stay. Subsequently, ROBERT WEICHERT filed a Notice of Appeal in the pending appellate proceeding appealling the failure of the Circuit Court to issue

a stay.

I. All of the pleadings of ROBERT WEICHERT have been directed at residence of GRACE R. MASSETT. No attempt has been made to deny that the Will was in fact the proper Will of Mrs. MASSETT and it is apparent that Mr. WEICHERT is attempting to move the administration of the estate from Florida to New York where he is in residence with the hope that somehow he could become the executor in New York. This is in spite of the fact that New York has a statute similar to Florida Statute 733.303(1)(a) which prevents convicted felons from serving as executors.

WHEREFORE, Petitioner moves this Court for an Order assessing attorneys' fees attributable to the bad faith and frivolous actions of ROBERT WEICHERT against his share of the estate. Petitioner has filed an accounting with

this Court which would show that ROBERT WEICHERT'S share of the estate will be in excess of $35,000.00 and the Court should use its discretion to see that Mr. WEICHERT pays for all of the extra attorneys' fees and costs that have been incurred because of his frivolous and bad faith actions.

UNDER penalties of perjury I declare that I have read the foregoing and the facts alleged are true to the best of my knowledge and belief.

EXECUTED this 15th day of July, 1991.

ELAINE W. ROBERTS
ELAINE W. ROBERTS, Personal Representative of the Estate of GRACE R. MASSETT

I CERTIFY that a copy of the above and foregoing Petition for Allocation of Attorneys' Fees and Court Costs was served on the following:

ROBERT WEICHERT
46 Oswego Street
Baldwinsville, New York 13027

HAROLD R. WEICHERT
103 Dorset Road
Syracuse, New York 13210

by U.S. mail this the 17th day of July, 1991.

NOWLIN & NOWLIN, P.A.
Attorneys for Petitioner
50 S.E. Fourth Avenue
Delray Beach, Florida 33483
(407) 276-9754

by: JAMES W. NOWLIN, JR.
JAMES W. NOWLIN, JR.
FLORIDA BAR NO. 59148

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA. PROBATE DIVISION. FILE NO. 90-2547 CPS

IN RE: ESTATE OF
GRACE R. MASSETT,
DECEASED.
_____/

PETITION FOR ATTORNEY'S FEE

Petitioner, ELAINE W., ROBERTS, as personal representative of this estate, alleges:

1. Petitioner employed NOWLIN & NOWLIN, P.A. and KLEIN & WALSH, P.A. as attorneys to represent petitioner in the performance of petitioner's required administrative duties and to render legal assistance and advice in the administration of this estate.

2. The attorneys have advised and assisted petitioner in the performance of petitioner's duties, prepared pleadings and other papers, and performed other duties on behalf of petitioner which have benefitted the estate, all as more fully described and set forth in the affidavits

attached hereto as Exhibit A and Exhibit B.

3. As a result of such employment, petitioner has become obligated to pay reasonable attorneys' fees for the services furnished.

4. Petitioner believes that reasonable attorneys' fees for the services furnished are as follows:

NOWLIN & NOWLIN, P.A.	$9,000.00
KLEIN & WALSH, P.A.	$1,460.00

5. The names of all persons bearing the impact of the payment of the attorneys' fees are as follows:

Elaine W. Roberts
Harold R. Weichert
Robert M. Weichert

Petitioner requests that an Order be entered authorizing and directing payment of the sum of $9,000.00 to NOWLIN & NOWLIN, P.A. and the sum of $1,460.00 to KLEIN & WALSH, P.A. for services rendered to the personal representative and the

estate.

Under the penalties of perjury, I declare that I have read the foregoing and the facts alleged are true to the best of my knowledge and belief.

Execute this 15th day of July, 1991.

ELAINE W. ROBERTS
ELAINE W. ROBERTS, Personal Representative of the Estate of GRACE R. MASSETT

Attorneys for Petitioner:
NOWLIN & NOWLIN, P.A.
50 S.E. Fourth Avenue
Delray Beach, Florida 33483
(407) 276-9754

JAMES W. NOWLIN, JR.
JAMES W. NOWLIN, JR.
FLORIDA BAR NO. 59148

I CERTIFY that a copy hereof has been furnished to:

Robert M. Weichert
46 Oswego Street
Baldwinsville, New York 13027

Harold R. Weichert
103 Dorset Road
Syracuse, New York 13210

Elaine W. Roberts
312 North Swinton Avenue
Delray Beach, Florida 33444

by mail this 17th day of July, 1991.

JAMES W. NOWLIN, JR.
JAMES W. NOWLIN, JR.

EXHIBIT A

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA. PROBATE DISIVION. FILE NO. 90-2547 CPS

IN RE: ESTATE OF
GRACE R. MASSETT,
DECEASED.
_____/

AFFIDAVIT OF ATTORNEY'S SERVICES

STATE OF FLORIDA
COUNTY OF PALM BEACH

BEFORE ME, the undersigned authority, personally appeared JAMES W. NOWLIN, JR. of the law firm ofNOWLIN & NOWLIN, P.A. who, being by me first duly sworn, deposes and says:

1. That he is an attorney at law, has been a member of the Florida Bar for thirty-three (33) years, and this affidavit is given of his own personal knowledge.

2. That he is the attorney for ELAINE W. ROBERTS, as Personal Representative of the Estate of GRACE R. MASSETT, and he attached two (2) computer printouts which

are accurate records of the time that he has spent in connection with this case; that the first computer printout shows that he expended 20.4 hours in general duties in connection with the administration of the estate; that the second computer printout shows that he spent 25.2 hours in connection with the various appeals and other matters contested by ROBERT M. WEICHERT in connection with this estate; that the total time he expended in connection with the Estate of GRACE R. MASSETT was 45.6 hours; that his customary hourly rate is $200.00; and that the hourly rate customarily charged for such services if $200.00.

JAMES W. NOWLIN, JR.
JAMES W. NOWLIN, JR.

Sworn to and subscribed before
me this 17th day of July, 1991.

RUTH D. QUINN
Notary Public
State of Florida at Large
My Commission Expires:
(Seal)

NOWLIN & NOWLIN, P.A.
Client Billing Worksheet
Date: 7/13/91
Time: 1:06 pm

MASSETT ESTATE: ESTATE OF GRACE MASSETT
Controller: None
Rounding: None
Full Precision: No

Last bill: / / Next aging : / /
Last Charge: 7/13/91
Last Payment:12/31/90 Amount: $2,000.00

Date/Slip#	Description	HR/RATE	AMT.
6//4/90	NOWLIN, JAMES	1.30	260.00
307W./TEL. CONF. with ELAINE ROBERTS RE OPENING MOTHER'S ESTATE. Dictate Petition for Administration, Order, Letters, Affidavit and Consents General		200.00	
6/6/90	NOWLIN, JAMES	0.80	160.00
309W./DICTATION Dictate letter to Robert Weichert, Dr. Harold Weichert and Elaine Roberts re Opening Estate and Execution of Consents General		200.00	
6/19/90	NOWLIN, JAMES	0.70	140.00
325W./ CONFERENCE Research re qualifications for Personal Representative. Conference with Elaine Roberts Re Appointment of Personal Rep. and General discussion of Probate Procedure General		200.00	

7/10/90 NOWLIN, JAMES 1.00 200.00
345W./ CONFERENCE. Conf. 200.00
with Elaine Roberts to
sign estate papers to
open estate General

7/31/90 NOWLIN, JAMES 0.20 40.00
374W./DICTATION. Tel. 200.00
conf. with Clerk to set
hearing. General.

8/2/90 NOWLIN, JAMES 0.20 40.00
1039W./PREPARATION. Prep. 200.00
of SS-4. Dictate ltr
to IRS. General.

9/18/90 NOWLIN, JAMES 1.50 300.00
448W./CONFERENCE. Conf. 200.00
with Elaine Roberts.
Dictate ltr to Robert
Weichert and Harold
Weichert. General.

9/23/90 NOWLIN, JAMES 0.80 160.00
456W./ REVIEW. Review 200.00
pleadings from
ROBERT WEICHERT. Review
Appellate Procedure.
Dictate ltr to Elaine
Roberts and Robert
Weichert, Prepare IRS
forms. Dictate ltr to
IRS. General.

9/28/90 NOWLIN, JAMES 0.40 80.00
464W./DICTATION. Dictate 200.00
ltr to IRS and Form
56. General.

11/7/90 533W./DICTATION. Dictate Notices to creditors, receipts, inventory and preliminary notice and report. General.	NOWLIN, JAMES	1.00 200.00	200.00
11/8/90 536W./TEL. CONF. Tel. Conf. with Eva of Metlife. Review Corres. with Heirs. General.	NOWLIN, JAMES	0.40 200.00	80.00
11/20/90 545W./DICTATION. Dictate ltr to Dept. of Revenue. General.	NOWLIN, JAMES	0.30 200.00	60.00
12/28/90 601W./CONFERENCE. Conf. with Elaine Roberts to prepare accting and discuss closing of estate. General.	NOWLIN, JAMES	1.00 200.00	200.00
2/25/91 721W./TEL. CONF. Tel. Conf. with Elaine Roberts re sale of Ft. Pierce Lots and progress of Appeal. Review Brief. Tel. Conf. with Larry Klein. General.	NOWLIN, JAMES	0.80 200.00	160.00
3/4/91 733W./CONFERENCE. Conf. with Elaine Roberts re Sale of St. Lucie land. Tel. Conf. with broker. Dictate ltr to broker. General.	NOWLIN, JAMES	1.00 200.00	200.00

4/3/91 802W./TEL. CONF. Tel. Conf. with Elaine Roberts re Motion for Stay and 1989 tax returns. General.	NOWLIN, JAMES	0.40 200.00	80.00
4/30/91 855W./DICTATION. Dictate ltr to Judge and heirs Tel. conf. with Title Company. General.	NOWLIN, JAMES	0.50 200.00	100.00
5/21/91 908W./TEL. CONF. Tel. Conf. with Elaine Roberts. General.	NOWLIN, JAMES	0.40 200.00	80.00
6/12/91 988W./TEL. CONF. Tel. Conf. with Dot Cole of Hoyt Murphy Realtors re sale of Lot. General.	NOWLIN, JAMES	0.30 200.00	60.00
6/24/91 1031W./TEL. CONF. Review receipts. Tel. conf. with Elaine Roberts re closing. Tel. conf. with broker re St. Lucie sale. General.	NOWLIN, JAMES	0.60 200.00	120.00
6/26/91 1040W./DICTATION. Dictate ltr to Title Co. re certified copies of court file. General.	NOWLIN, JAMES	0.30 200.00	60.00

7/2/91 NOWLIN, JAMES 0.30 60.00
1068W./DICTATION. Dictate 200.00
Petitions for Atty's
fees and personal
representative's
fees. General.

7/12/91 NOWLIN, JAMES 0.20 40.00
1099W./TEL. CONF. Tel. 200.00
Conf. with Title
Co. re sale of lot.
General.

7/13/91 NOWLIN, JAMES 2.00 400.00
1104W./PREPARATION. Prep. 200.00
of petitions and
closing papers.
Dictate motions
for personal
representative
fees and atty's
fees. Dictate notice
of hearing. Dictate
motion for allcation
of fees. General.

7/13/91 NOWLIN, JAMES 4.00 800.00
1105w./COURT APP. Antici- 200.00
pated time at hearing
on fees, allocation
of atty fees, petition
for discharge and
accounting scheduled
for July 29, 1991.
Anticipated time to
close estate, make
distribution and
prepare final tax
return for estate.
General.

TOTAL BILLABLE TIME CHARGES:
HOURS: 20.40 TOTAL: $4,080.00

Date/Slip#	Description	QTY/PRICE	
7/12/90	NOWLIN, JAMES W.	1	99.00
1041	Filing fee to open estate. General.	99.00	
9/13/90	NOWLIN, JAMES W.	1	6.00
1044	Filing fee.Cert. copy of death certificate. General.	6.00	
9/21/90	NOWLIN, JAMES W.	1	17.00
1045	Filing fee. Bank records of preparation of tax return. General.	17.00	
10/4/90	NOWLIN, JAMES W.	1	58.50
1046	Filing fee. Publication of notice of administration. General.	58.50	
11/19/90	NOWLIN, JAMES W.	1	5.00
1047	Filing fee. Depart. of Revenue for non-tax certificate. General.	5.00	
3/4/91	NOWLIN, JAMES W.	1	2.00
1048	Copy charges. Cert. copy of ltrs of administration. General.	2.00	
6/25/91	NOWLIN, JAMES W.	1	3.15
1050	Copy Charges. Cert. copies for sale of lot. General.	3.15	

TOTAL BILLABLE COSTS: $190.65

TOTAL NEW CHARGES:		$4270.65
NEW BALANCE		
New Current Month	$4270.65	
TOTAL NEW BALANCE		$4270.65

NOWLIN & NOWLIN, P.A.
Client Billing Worksheet

Date: 7/13/91
Time: 1:14 pm

MASSETT ESTATE: ESTATE OF GRACE MASSETT
Controller: None
Rounding: None
Full Precision: No

Last Bill: / / Next aging: / /
Last Charge: 6/25/91
Last Payment: 12/31/90 Amount: $2000.00

Date/Slip#	Description	HOURS/RATE	AMT.
7/27/90 371	NOWLIN, JAMES W./REVIEW. Review pleading from Robert M. Weichert. Tel. Conf. with FLA. BAR, NY COURT ADMINISTRATION Dictate ltr to Elaine Roberts. Dictate ltr to NY Court Admin. Apeal.	1.30 200.00	260.00
7/27/90 372	NOWLIN, JAMES W./TEL. CONF. 3 Long Distance calls (904) 561-5600, (518) 463-3200,(212) 587-5872) re Robert Weichert Appeal.	4.50 200.00	900.00
8/2/90 376	NOWLIN, JAMES W./PREPARATION. Review pleadings filed by Robert Weichert. Appeal.	0.40 200.00	80.00

8/10/90	NOWLIN, JAMES	0.80		160.00
393	REVIEW. Review ltr from Assistant US Atty, NY Bar and Florida Bar. Appeal.	200.00		
8/15/90	NOWLIN, JAMES	1.00		200.00
406	W./TEL. CONF. Tel. Conf. with US Atty's Office, Tel. Conf. with Clerk of Dist. Court.(2) Dictate ltr to Clerk and US Atty. Dictate Notice of Hearing, Motion and Proof of Service. Appeal.	200.00		
9/4/90	NOWLIN, JAMES	1.50		300.00
414	W./CONF. Conf. with Elaine Roberts. Appeal.	200.00		
9/5/90	NOWLIN, JAMES	0.70		140.00
415	W./REVIEW. Review pleadings for hearing. Appeal.	200.00		
9/6/90	NOWLIN, JAMES	1.50		300.00
418	w./COURT APP. Attend Court Hearing to open estate. Conf. with Elaine Roberts. Appeal.	200.00		
9/8/90	NOWLIN, JAMES	0.70		140.00
423	W./DICTATION. Dictate Beneficiary's agreement and ltr to Robert M. Weichert. Appeal.	200.00		

9/14/90 442	NOWLIN, JAMES W./DICTATION. Dictate ltr to Robert Weichert and Elaine Roberts. Appeal.	0.50 200.00	100.00
9/25/90 457	NOWLIN, JAMES W./TEL. CONF. Tel. Conf. with Elaine Roberts re Appeal. Appeal.	0.40 200.00	80.00
10/2/90 470	NOWLIN, JAMES W./TEL. CONF. Tel. Conf. with Larry Klein. Dictate ltr to Larry Klein and Elaine Roberts. Appeal.	0.50 200.00	100.00
10/3/90 480	NOWLIN, JAMES W./DICTATION. Dictate ltr to Robert Weichert. Appeal.	0.30 200.00	60.00
10/10/90 486	NOWLIN, JAMES W./REVIEW. Review order from Appell-ate Court. Appeal.	0.30 200.00	60.00
10/19/90 499	NOWLIN, JAMES W./TEL. CONF. with Elaine Roberts. Review motion to stay. Dictate fax to Larry Klein. Appeal.	0.80 200.00	160.00

10/24/90 NOWLIN, JAMES 506 W./REVIEW. Review settlement statement. Work on Appellee's statement. Appeal.		1.00 200.00	200.00
10/29/90 NOWLIN, JAMES 507 W./DICTATION. Dictate fax to Larry Klein. Dictate settlement statement. Appeal.		0.50 200.00	100.00
11/5/90 NOWLIN, JAMES 522 W./PREPARATION. Preparation of pleadings in appeal. Research re motion for stay. Appeal.		1.40 200.00	280.00
11/6/90 NOWLIN, JAMES 528 W./CONFERENCE. Conference with Elaine Roberts. Appeal.		1.00 200.00	200.00
11/12/90 NOWLIN, JAMES 540 W./REVIEW. Review motions for stay. Appeal.		0.20 200.00	40.00
12/4/90 NOWLIN, JAMES 576 W./REVIEW.Review order from District Court. Appeal.		0.30 200.00	60.00
12/10/90 NOWLIN, JAMES 583 W./REVIEW. Review screening order from District Court. Appeal.		0.40 200.00	80.00

1/30/91 658	NOWLIN, JAMES W./REVIEW. Review Appeal file. Tel. Conf. with Larry Klein. Dictate ltr to Larry Klein. Appeal.	1.00 200.00	200.00
1/31/91 662	NOWLIN, JAMES W./TEL. CONF. Tel. Conf. with Clerk of District Court and Larry Klein's Office. Appeal.	0.40 200.00	80.00
2/5/91 666	NOWLIN, JAMES W./ TEL. CONF. Tel. Conf. with Larry Klein re Mandamus Petition. Appeal.	0.20 200.00	40.00
3/11/91 748	NOWLIN, JAMES W./TEL. CONF. Tel. Conf. with Title Company re issuance of title insurance. Tel. Conf. with ATIF re issuance of title insurance during pendency of appeal. Appeal.	0.40 200.00	80.00
3/26/91 776	NOWLIN, JAMES W./PREPARATION. Review file. Preparation of Order. Research re stay. Appeal.	0.80 200.00	160.00
3/27/91 782	NOWLIN, JAMES W./COURT APP. Attend Court Hearing re motion for stay. Appeal.	0.70 200.00	140.00

6/14/91 995	NOWLIN, JAMES W./DICTATION. Dictate ltr to Larry Klein re petition for fees regarding appeal. Appeal.	0.20 200.00	40.00
6/21/91 1030	NOWLIN, JAMES W./RESEARCH. Research re surchage of atty's fees. Appeal.	0.50 200.00	100.00
6/25/91 1038	NOWLIN, JAMES W./REVIEW. Review file in appellate court re allocation of fees. Appeal.	1.00 200.00	200.00

TOTAL BILLABLE TIME CHARGES: HOURS:

HOURS: 25.20 AMOUNT: $5,040.00

Date/Slip#	Description	Qty/Price	
7/27/90	NOWLIN, JAMES	1	5.60
1043	W./Tel. Long Distance tel. charges. Appeal.	5.60	
8/16/90	NOWLIN, JAMES	1	5.00
1042	W./Filing Fee. Certified copy of conviction of Robert Weichert. Appeal.	5.00	

TOTAL BILLABLE COSTS: $10.60

TOTAL NEW CHARGES: $5050.60

NEW BALANCE

New Current Month $5050.60

TOTAL NEW BALANCE: $5050.60

EXHIBIT B

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR PALM BEACH COUNTY, FLORIDA, PROBATE DIVISION
FILE NO. 90-2547 CPS

IN RE: ESTATE OF
GRACE R. MASSETT,
DECEASED.
_____/

AFFIDAVIT OF ATTORNEY'S FEES

STATE OF FLORIDA]
COUNTY OF PALM BEACH] SS.:

BEFORE ME, the undersigned authority, personally appeared LARRY KLEIN of the law firm KLEIN & WALSH, P.A., who was sworn and says as follows:

1. The undersigned is over the age of eighteen (18) years, is sui juris, is a licensed member of the Florida Bar, has personal knowledge of the facts and is competent to testify to them.

2. I am the appellate attorney for Elaine W. Roberts, personal representative of the above Estate on the appeal taken by Harold R. Weichert. I expended 7.30 hours on the appeal. My hourly rate is $200.00. The hourly rate customarily charged for such service is $200.00.

3. A detailed listing of my time and

charges for services rendered in this case is attached as Exhibit A.

Total Attorney's Time - 7.30 hours

Total Attorney's Time x $200.00 per hour = $1,460.00

FURTHER AFFIANT SAYETH NAUGHT.

LARRY KLEIN
LARRY KLEIN

Sworn to and subscribed before me
this 5th day of July, 1991.

B. DENISE HADLEY
Notary Public, State of Florida

LARRY KLEIN, of
KLEIN & WALSH, P.A.
501 South Flagler Drive
Suite 503-Flagler Center
West Palm Beach, FL 33401
(407) 659-5455

By: LARRY KLEIN
LARRY KLEIN
Florida Bar #043381

KLEIN & WALSH, P.A.
Suite 503-Flagler Center
501 South Flagler Drive
West Palm Beach, FL 33401
(407) 659-5455

Date: 6/04/91
Reference No. 793

James W. Nowlin
Nowlin & Nowlin, P.A.
50 S.E. Fourth Avenue
Delray Beach, Florida 33483

For Professional Services Concerning:
File No. 1755-P-1755A
Title: Est. of MASSETT (Weichert v.Robert)

	Rate	Hours
1/30/91 Review appellant's brief ltr to Nowlin and preparation of motion to strike brief.	200	1.50
2/6/90 Preparation of response to petition for writ of mandamus.	200	.50
2/22/91 Preparation of appellee's answer brief.	200	5.00
2/26/91 Proof appellee's brief.	200	.30
		7.30

Professional Fee: $1,460.00

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA. PROBATE DIVISION.
FILE NO. 90-2547 CPS

IN RE: ESTATE OF
GRACE R. MASSETT,
DECEASED.
_____/

AFFIDAVIT AS TO ATTORNEY'S FEES AND PERSONAL REPRESENTATIVE'S FEE

BEFORE ME, the undersigned authority, personally appeared LARRY SCHONE, being by me first duly sworn, deposes and says as follows:

1. That he is a practicing attorney in Delray Beach, Palm Beach County, Florida, and has been licensed to practice law in the State of Florida since 1986.

2. That he is a member of the firm PERRY & SCHONE, P.A.

3. That he is familiar with amounts customarily charged by attorneys and personal representatives in Palm Beach County, Florida and allowed by the courts in such proceedings.

4. That he has reviewed the file, time records and billing statements of the law firm of NOWLIN & NOWLIN, P.A., KLEIN & WALSH, P.A., and the affidavit of ELAINE W. ROBERTS, Personal Representative of the Estate of GRACE R, MASSETT.

5. That he considers that the time spent by the law firm of KLEIN & WALSH, P.A., and by ELAINE W. ROBERTS was reasonable and necessary in order to administer the Estate of GRACE R. MASSETT.

6. That he is familiar with the decision of Florida Patients' Compensation Fund v. Rowe and In Re Estate of Lester Platt, and he believes that a reasonable fee for NOWLIN & NOWLIN, P.A. would be $9,200.00; a reasonable fee for KLEIN & WALSH, P.A. would be $1,500.00; and a reasonable Personal Representative's fee for ELAINE W. ROBERTS would be $3,600.00.

LARRY SCHONE
LARRY SCHONE
FLORIDA BAR #0562785

Sworn to and subscribed before me
this 17th day of July, 1991.

RUTH D. QUINN
Notary Public
State of Florida at Large
My commission expires:
(Seal)

Supreme Court, U.S.
FILED
DEC 2 1992
OFFICE OF THE CLERK

No. 92-871

In The

Supreme Court of the United States

October Term, 1992

IN RE: GRACE R. MASSETT,
Deceased.

ROBERT N. WEICHERT,
Petitioner,

vs.

ELAINE W. ROBERTS,
Respondent.

On Petition For Writ Of Certiorari
To The Fourth District Court Of Appeals
State Of Florida

BRIEF IN OPPOSITION

LARRY KLEIN OF
KLEIN & WALSH, P.A.
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COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
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STATEMENT OF THE CASE

Petitioner's objection to the final accounting, which he claims he did not have sufficient time to challenge, makes no specific objection except a complaint about some furniture (H 1). This estate was worth a total of $170,000. The personal representative was seeking $3,600 compensation for 120 hours work (O 2). The attorney for the personal representative, James W. Nowlin, Jr., sought a fee of $9,000 for 45 hours of work he performed in connection with the estate, and $1,460 for 7.3 hours of work performed by Klein & Walsh in connection with defending appellant's prior appeals (Q 1). The court awarded those fees after a hearing of which appellant received timely notice but did not attend, and appellant appealed that order to the Fourth District Court of Appeal, State of Florida. That court affirmed without writing an opinion.

SUMMARY OF ARGUMENT

Petitioner was afforded adequate notice in compliance with Florida Rules of Procedure and due process. This petition should be denied.

ARGUMENT

Petitioner's statement of the case and appendix demonstrates that he received the notice of hearing at least six days prior to the hearing. It was mailed to the address he

gave for service of papers throughout this proceeding 12 days prior to the hearing.

Under Florida Probate Rule 5.042(c), petitioner was entitled to "reasonable" notice. His argument on page 19 that he was entitled to 20 days notice is incorrect. The 20 days notice required under Florida Probate Rule 5.040 is for the *first* notice required in adversary proceeding in probate cases, but not the type of notice required thereafter. Florida Probate Rule 5.042(c).

CONCLUSION

The mailing of a notice of hearing 12 days prior to a hearing, and the receipt of such notice 6 days prior to the hearing, is reasonable notice, and not a denial of due process or any other constitutional right. The petition for certiorari should be denied.

Respectfully submitted,

LARRY KLEIN OF
KLEIN & WALSH, P.A.
Counsel of Record
501 South Flagler Drive
Suite 503 Flagler Center
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(407) 659-5455

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